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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF:	PATENT
THOMAS EUGENE WACHURA	
SERIAL NUMBER: 09/996,342	ART UNIT NO.: 2863
FILED: NOVEMBER 21, 2001	EXAMINER: TUNG S. LAU
FOR: APPARATUS AND METHOD FOR SAMPLING EYE DIAGRAMS WITH WINDOW COMPARATORS	ATTY DOCKET NO.: WASC1821

Corral de Tierra, CA
February 28, 2006

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Douglas A. Chaikin, Registration No. 29,140

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Douglas A. Chaikin

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TRANSMITTAL OF APPEAL BRIEF

Mail Stop Appeal Briefs- Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Transmitted herewith is Response A in the above-identified application.

Small entity status of this application under 37 CFR §1.9 and §1.27 has been established by a verified statement previously submitted.

A verified statement to establish small entity status under 37 CFR §1.9 and §1.27 is enclosed.

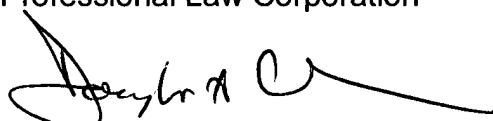
**TRANSMITTAL OF APPEAL BRIEF
ATTORNEY DOCKET NO.: STPH1728RCE**

February 28, 2006

- X Appeal Brief (Original + 3 Copies);
- X Appendix A - Pending Claims;
- X Appeal fees of \$250.00 is also enclosed with PTO form 2038.

Respectfully submitted,

**PENINSULA IP GROUP
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF:

**ROGER D. STEPHENS and
ERWIN SCHMIDMEISTER**

SERIAL NUMBER: **09/586,653**

FILED: **June 1, 2000**

FOR: **WIRELESS HEMODYNAMIC STATUS
MONITORING DEVICE**

PATENT

ART UNIT NO.: **2635**

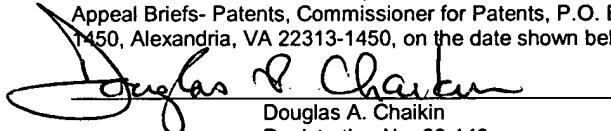
EXAMINER: **Albert K. Wong**

ATTY DOCKET NO.: **STPH1728**

Corral de Tierra, California
February 28, 2006

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Douglas A. Chaikin
Registration No. 29,140
February 28, 2006

APPEAL BRIEF

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Dear Sirs:

Appellant, in the above-noted patent application, is appealing the final rejection of Claims 1-18 made in the Examiner's Action dated June 29, 2005. The subject matter of all of the above claims having been at least twice rejected, this case is in condition for appeal to the Board in accordance with 35 U.S.C. 134.

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February 28, 2006

This Appeal Brief is filed in triplicate. A check in the amount of \$760.00 is included to cover the following: the fee of \$510.00 for a three-month extension of time for responding to the above-noted Examiner's Action; and the fee of \$250.00 for filing an appeal brief.

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I. STATUS OF CLAIMS

Claims 1-10 and 12 - 18 are pending and stand rejected in the instant application. Claims 1-10 and 12 - 18 are hereby appealed. For ease of reference and consideration, a copy of the claims involved in this appeal is attached hereto as Appendix A.

II. STATUS OF THE AMENDMENTS

The instant application was filed on June 1, 2000. In response to a Final Rejection dated June 29, 2005, Claims 1, 4, 8 and 16 were amended to clarify the specific structural and functional features of the invention. The Examiner has maintained his rejection of the pending claims, including the amended claims above. Therefore, no claim pending in the instant application has been amended subsequent to the Final Rejection dated June 29, 2005.

III. SUMMARY OF THE INVENTION

The instant invention is directed to a method and an apparatus for the wireless transmission of hemodynamic information from a patient to a monitoring system. The apparatus includes "a manifold configured to maintain and organize cables that provide the hemodynamic status information to the transmitter". (Claim 1) Through wireless communication "an associated receiver" receives "the collected hemodynamic status information."

The "manifold" is "configured to graph and organize the cables". (Claim 4) "[T]he transmitter [operates] to receive the electrical signals, to convert the

electrical signals into digital data, to convert the digital data into electromagnetic waves, and to broadcast the electromagnetic waves.

IV. ISSUES PRESENTED ON APPEAL

- A. Whether the Examiner properly finally rejected Claim 1 and whether Claim 1 was ever rejection under final.
- B. Whether Claims 2 – 10 and 12 – 18 were improperly rejected under 35 U.S.C. §103.

V. GROUPING OF CLAIMS

For purposes of this Appeal, the pending claims shall be grouped as follows:

Group 1: Claims 1-4 and 10 are directed to an apparatus for the wireless transmission of hemodynamic information from a patient to a monitoring system.;

Group 2: Claims 2 and 3 are directed to an apparatus for the wireless transmission of hemodynamic information from a patient to a monitoring system

Group 3: Claims 4 – 9 and 12 – 15 are directed to an apparatus for the wireless transmission of hemodynamic information from a patient to a monitoring system; and

Group 4: Claims 16-18 are directed to an apparatus for the wireless transmission of hemodynamic information from a patient to a monitoring system.

VI. ARGUMENT

A. Claims 1 has been improperly finally rejected

The final rejection of June 29, 2005 contained absolutely no reference to Claim 1 and therefore that claim stands improperly finally rejected. Withdrawal of the final rejection is requested and a refund of all late fees and the appeal fee are similarly requested.

B. Claims 2 – 10 and 12 – 18 have been improperly rejected as the cited references, since neither individually nor in hypothetical combination do the references include each and every limitation of the pending claims, nor do the reference anticipate, teach or make obvious the pending claims, again whether individually or in combination

The Examiner has rejected Claim 16 under 35 U.S.C. §103(a) as being unpatentable over Reuss, et al. (U.S. Patent No. 6,364,834) in view of Snell, et al. (U.S. Patent No. 5,759,199) further in view of MacEachern (U.S. Patent No. 9,071,243).

It is the Examiner's burden to provide a *prima facie* case of obviousness. MPEP §2142.

To establish a *prima facie* case of obviousness, three basic criteria must be met. ***First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the***

art, to modify the reference or to combine reference teachings. Second there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and *not based on applicant's disclosure.*

Additionally, as noted in the information sent along with the Examiner's Office Action, the suggestion to combine one reference with another must be in the reference itself. There is no suggestion, nor would one expect there to be any suggestion in Reuss et al, to provide a wireless connection, nor a manifold as set forth in the Claims.

Reuss et al is a patient monitoring device having a central monitor, a "remote access device *that are tied together* through an integrated communications link is disclosed."

It should be noted that original application of Reuss et al was first filed November 1996. Later, Reuss et al, filed a CIP Jan. 4, 1999. The disclosure of the Snell et al. was made public at least as early as June 2, 1998. If Reuss et al thought it was advantageous clearly they would have added at least a mention of the fact that wireless was possible. Reuss et al did not and there is absolutely nothing within the confines of

the base reference Reuss et al to provide the examiner with the motivation, either explicit or implicit to suggest the combination of Reuss et al with Snell et al.

Also as stated in MPEP § 2143, "With regard to rejections under 35 USC §103, the examiner must provide evidence which as a whole shows that the legal determination sought to be proved (i.e., the reference teachings establish a *prima facie* case of obviousness) is more probable than not." The Examiner has not even attempted to provide such evidence despite being requested to do so by the Applicant. Again, where is the teaching in the base reference that the hypothetical combination should be formed? The examiner's response is requested again.

The gaining of an "advantage" is NOT a suggestion or a motivation to combine unless it would be perceived by the reference itself to do so. Here there is no such explicit or implicit motivation in the base reference or the secondary reference Snell et al.

Clearly it is irrefutable that there is no such explicit suggestion to combine. Nothing whatsoever in Reuss et al states that it would be advantageous to make it wireless. This suggestion is either implicit or fails to exist at all. Considering Snell et al was known at the time that Reuss et al was re-filed as a CIP after the public disclosure of Snell et al. This is especially so when one considers the relevant dates involved. If Reuss et al considered it an advantage; there would have at least been a mention of it somewhere in the refilled case. Thus, there is not even an implicit suggestion to make Reuss et al make it wireless and the only place where the suggestion can possibly come is from applicant's own disclosure.

The Examiner admits that neither of the references discloses a manifold as set forth in the claims. The Examiner seems to be combining MacEachern with Reuss and Snell on the basis that the nature of the problem to be solved is the same. A closer reading MacEachern shows this is false.

MacEachern discloses a transducer positioning system. As stated in MacEachern, col. 1, ll. 21 –24, “One of the most effective devices for these types of measurements is a pressure transducer directly communicating with the particular bodily fluid of interest. Continuing on, MacEachern states at ll. 36 -42, “If the user, however, desires to monitor the absolute pressure of the bodily fluid, then the pressure transducer **must be mounted in a fixed relationship** to the patient. For example, if arterial pressure is to be monitored, then the pressure transducer **must be mounted approximately at the level of the heart.** (Emphasis supplied.)

Clearly the prior art does NOT teach as the examiner suggests a device that increases “patient mobility. In fact, MacEachern teaches a device that needs to have the wireless device with a manifold in a fixed and definite position to the patient. In fact this is a teaching in a direction completely opposite from the applicant’s and the Examiner’s own hypothetical combination of Reuss et al and Snell et al.

And further MacEachern states at col. 2, ll. 2-5, “The present invention is used to prevent the inaccuracies associated with this procedure to provide a more dependable and reproducible measurement of arterial or fluid pressure.” There is no suggestion in MacEachern to combine it to make a manifold in a wireless system. In fact as noted above the precision required of the art in MacEachern and to that which

not only the device of MacEachern and the relevant art of MacEachern teaches in a opposite direction from both the applicant's invention and the hypothetical combination. And, in fact, applying the referenced disclosures fairly and as a whole would result in an unusable device that would serve no possible purpose. The glue that teaches all of this is applicant's invention. One cannot make a useful and operable device without the disclosure of Applicant's invention. Clearly, this is impermissible and the above rejection should be withdrawn at once.

Accordingly, the rejection of Claims 15-16 is improper and should be withdrawn.

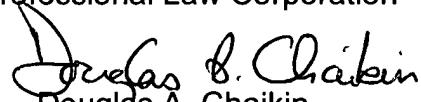
VII. CONCLUSION

Based on the foregoing arguments, it is submitted that the Examiner's rejections are in error that Claims 1-16 are not anticipated within the meaning of 35 U.S.C. 102 in view the cited reference.

Accordingly, it is respectfully submitted that the instant application is in form for allowance, and such action is earnestly solicited.

Respectfully submitted,

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APPENDIX A

PENDING CLAIMS

1. (Previously Presented) A wireless hemodynamic status monitoring device, comprising:
 - a transmitter for collecting and wirelessly transmitting hemodynamic status information; [and]
 - a manifold configured to maintain and organize cables that provide the hemodynamic status information to the transmitter; and
 - an associated receiver for receiving and displaying the collected hemodynamic status information.
2. (Previously Presented) A monitoring device as set forth in Claim 1, wherein the transmitter comprises:
 - a first housing having an interior surface and an exterior surface;
 - a plurality of input connectors interposed on the exterior surface of the first housing for collecting hemodynamic status information and projecting such information through the interior surface;
 - a plurality of digital data boards connected to corresponding input connectors and removably attached to the interior surface of the housing for receiving hemodynamic status information from the input connectors, converting said information into digital data, and relaying the digital data;
 - a digital motherboard removably attached to the interior surface of the housing adjacent the digital data boards for converting and relaying the digital data;
 - a sending device attached to the exterior surface of the housing for receiving the relayed and converted information from the digital motherboard and transmitting said information to the receiver.

3. (Previously Presented) A monitoring device as set forth in Claim 1, wherein the receiver comprises:
 - a second housing having an interior surface and an exterior surface;
 - a receiving device attached to the exterior surface of the second housing for receiving information from the transmitter and relaying said information;
 - a mother circuit board removably attached to the interior surface of the second housing adjacent and connected to the receiving device for converting the information received from the receiving device into digital data and relaying said digital data;
 - a plurality of digital data boards connected to the mother circuit board and removably attached to the interior surface of the second housing for collecting information relayed by the mother circuit board and converting the relayed information into electromagnetic signals and transmitting said signals;
 - a plurality of connectors positioned on the exterior surface of the second housing for conducting said information through to the interior surface.
4. (Previously Presented) A monitoring system for a patient, comprising:
 - sensors to sense physical information concerning the patient;
 - transducers to convert the physical information into electrical signals;
 - cables to relay the electrical signals to a transmitter;
 - a manifold configured to graph and organize the cables;
 - the transmitter operative to receive the electrical signals, to convert the electrical signals into digital data, to convert the digital data into electromagnetic waves, and to broadcast the electromagnetic waves;
 - a receiver operative to receive the electromagnetic waves, convert the electromagnetic waves into digital signals, convert the digital data into electrical signals, and to output the electrical signals; and

a monitor unit operative to receive the electrical signals, to convert the electrical signals into physical information and to display the physical information.

5. (Previously Presented) The monitoring system of Claim 4 wherein the transmitter comprises:

a transmitter housing having an interior surface and an exterior surface;

a plurality of input connectors interposed on the exterior surface of the transmitter housing for receiving electrical signals from the cables;

a plurality of transmitter data circuit boards connected to corresponding input connectors and removably attached to an interior surface of the transmitter housing for receiving electrical signals from the input connectors, converting the electrical signals into digital data, and relaying the digital data;

a transmitter motherboard removably attached to the interior surface of the housing adjacent the transmitter data circuit boards for converting the digital data to electromagnetic waves and relaying the electromagnetic waves; and

a transmitter antenna pivotally attached to the exterior surface of the transmitter housing for receiving the relayed electromagnetic waves from the transmitter motherboard and broadcasting said electromagnetic waves to the receiver.

6. (Previously Presented) The monitoring system of Claim 4, wherein the receiver comprises:

a receiver housing having an interior surface and an exterior surface;

a receiver antenna pivotally attached to the exterior surface of the receiver housing for receiving electromagnetic waves from the transmitter and relaying said electromagnetic waves;

a receiver motherboard removably attached to the interior surface of the receiver housing adjacent and connected to the receiving device for converting the electromagnetic waves into digital data;

a plurality of receiver data circuit boards connected to the receiver motherboard and removably attached to the interior surface of the receiver housing for collecting digital data relayed by the receiver motherboard and converting the relayed [the] digital data into electrical signals and outputting said electrical signals; and

a plurality of output connectors for receiving electrical signals output by the data circuit boards, said output connectors being positioned on the exterior surface of the receiver housing for connection with monitor cables.

7. (Original) The monitoring system of Claim 4, wherein the electromagnetic waves broadcast by the transmitter are infrared waves.
8. (Previously Presented) The monitoring system of Claim 6, wherein a [second] first end of each of the cables is a male end and a first end of each of the monitor cables is a mating female end, such that a particular second end of a cable may be plugged into a particular second end of a monitor cable.
9. (Original) The monitoring system of Claim 8, wherein the cables and the monitor cables are color-coded.
10. (Original) The monitoring system of Claim 1, wherein the transmitter is removably attached to a bed frame of the patient.
11. CANCELLED
12. (Previously Presented) The monitoring system of Claim 4 further comprising cable holders to store extra lengths of monitor cable.
13. (Previously Presented) The monitoring system of Claim 4, wherein the transmitter is removably attached to a bed frame of the patient.
14. (Previously Presented) The monitoring system of Claim 4, wherein the receiver is removably attached to the monitor unit.

15.(Previously Presented) The monitoring system of Claim 4, wherein the patient's physical information being monitored is hemodynamic information.

16.(Previously Presented) For a patient who is being monitored for hemodynamic information, a device for reducing the number of cables extending between a patient and a monitor comprising:

 a transmitter for collecting and wirelessly transmitting hemodynamic status information; [and]

 a manifold configured to grasp and organize cables that provide the hemodynamic status information to the transmitter; and

 a receiver for receiving the collected hemodynamic status information.

17.(Original) A device as set forth in Claim 16, wherein the transmitter comprises:

 a transmitter housing having an interior surface and an exterior surface;

 a plurality of input connectors interposed on the exterior surface of the transmitter housing for receiving hemodynamic status information;

 a plurality of transmitter data circuit boards connected to corresponding input connectors and removably attached to an interior surface of the transmitter housing for receiving hemodynamic status information from the input connectors, converting said information into digital data, and relaying the digital data;

 a transmitter motherboard removably attached to the interior surface of the housing adjacent the transmitter data circuit boards for converting the digital data to electromagnetic eaves and relaying the electromagnetic waves; and

 a transmitter antenna pivotally attached to the exterior surface of the housing for receiving the relayed electromagnetic waves from the transmitter motherboard and broadcasting the electromagnetic waves to the receiver.

18.(Previously Presented) A monitoring device as set forth in Claim 16, wherein the receiver comprises:

a receiver housing having an interior surface and an exterior surface;

a receiver antenna pivotally attached to the exterior surface of the receiver housing for receiving electromagnetic waves from the transmitter and relaying said electromagnetic waves;

a receiver motherboard removably attached to the interior surface of the receiver housing adjacent and connected to the receiving device for converting the electromagnetic waves into digital data;

a plurality of receiver data circuit boards connected to the receiver motherboard and removably attached to the interior surface of the receiver housing for collecting digital data relayed by the receiver motherboard, for converting the relayed [the] digital data into electrical signals and for outputting the electrical signals; and

a plurality of output connectors positioned on the exterior surface of the receiver housing to receive the electrical signals output by the receiver data circuit boards and for connection with monitor cables.

19 – 26. CANCELLED